NOTICE
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2012 IL App (5th) 110076-U

NO. 5-11-0076

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Williamson County. |
| | ) | |
| v. | ) | No. 06-CF-59 |
| | ) | |
| ERIC STEPHEN WILLIS, | ) | Honorable |
| | ) | Phillip G. Palmer, |
| Defendant-Appellant. | ) | Judge, presiding. |

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Donovan and Justice Goldenhersh concurred in the judgment.

## ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in sentencing the defendant to imprisonment instead of probation where the defendant, a teacher, was convicted of the aggravated criminal sexual abuse of his student and the court considered and weighed all of the relevant factors in aggravation and mitigation.

¶ 2 In 2005, the defendant, Eric Stephen Willis, a high school teacher, had a sexual affair with a 16-year-old female student. The defendant was 29 years of age at the time.

¶ 3 On February 2, 2006, the defendant was charged in a three-count information filed in the circuit court of Williamson County. Count I charged the defendant with criminal sexual assault for having had sexual intercourse with a minor between 13 and 18 years of age while he was 17 years of age or older and while he was in a position of trust, authority, or supervision over the minor. Count II charged the defendant with aggravated criminal sexual abuse for having had sexual intercourse with a minor between 13 and 17 years of age while he was at least five years older than the minor. Count III charged the defendant with

aggravated criminal sexual abuse for having touched with his hands the vagina of a minor between 13 and 17 years of age while he was at least five years older than the minor for the purpose of sexual gratification.

¶ 4 On August 5, 2010, the defendant entered an open plea of guilty to count II of the information, a Class 2 felony. The State did not agree to recommend any sentence, but did agree to dismiss the other two charges against the defendant. The following factual basis for the plea was stated:

> "Your Honor, if the State were to take this to trial, we would call [the victim] who would state in the Fall of 2005 she was 16 years old. She was going to be a junior at Anna-Jonesboro High School. She was familiar with Eric Willis who's a teacher at the school. She had had him as a teacher her Sophomore year. She also knew him through her aunt. They began talking in the Fall of 2005. It progressed to e-mail back and forth between the two of them and eventually progressed into a relationship. She was at his house numerous times between October and–October 1st, 2005, and December 24th, 2005. His home is located here in Marion. She indicated that the relationship progressed into a physical relationship in which they had sex several times in that time span. That involved him placing his penis into her vagina. She was 16 at the time. He was 31 years of age of–he was turning 31. His birthday is during that time span, so there was more than five years' difference between the two of them. All these events did occur within Williamson County."

¶ 5 Defense counsel clarified that the defendant had been 29 years of age, turning 30, during the time span in question. The court accepted the factual basis for the plea and, after questioning and admonishing the defendant, accepted his guilty plea. Counts I and III were dismissed.

¶ 6 The matter came on for sentencing on September 24, 2010. The presentence

investigation report was admitted into evidence. The defendant had no previous criminal record except for one conviction in Union County for misdemeanor battery against the instant victim based on the same sexual affair as is at issue in the case at bar. The defendant had been sentenced to 24 months' probation on November 26, 2008.

¶ 7 The defendant had been married and divorced once, and was separated from his second wife, the mother of his four-year-old child. This child lives with her mother. The defendant's two parents are living and remain supportive. The defendant began working as an underground mine laborer in 2008, after having lost his teaching job because of this offense. He wants to return to college and get a degree in mining engineering.

¶ 8 The defendant has had ongoing substance abuse problems. He abuses alcohol and admitted to experimenting with marijuana two times and trying cocaine once. He also admitted to an addiction to prescription medications. He had sought substance abuse counseling and stated that he no longer abuses any drugs. The report did not recommend any particular sentence.

¶ 9 An adult sex offender evaluation conducted by the probation department was also admitted into evidence. This evaluation concluded that the defendant had a low risk of recidivism and low risk of violence. The defendant is not a risk for child molestation, which involves only children under 13 years of age. On the alcohol and drug scales, the defendant scored in the problem risk range. The defendant indicated that he was willing to undergo sex offender treatment.

¶ 10 In aggravation, the victim's mother read into the record her victim impact statement. She explained that the victim had endured threats from peers and doubts from teachers and peers after the defendant lost his job. The victim felt guilty and suffered from sleeplessness, anxiety attacks, and destructive behaviors. She changed high schools twice and participated in counseling. She also had to endure physical examinations and blood work every three

months, which was very traumatic for her. The victim's younger brother continues to hear inappropriate comments from his peers regarding his sister. The mother believed that her daughter went to college far away to escape. The most hurtful thing was when the victim did not receive scholarships and high school awards and honors which she otherwise deserved, based on her lack of "high morals."

¶ 11 The victim, who was 21 years of age at the time, read into the record her victim impact statement. She explained that prior to her relationship with the defendant she had been one of the top 10 students in her class, a member of many sports teams, and an officer in multiple clubs. However, her home life had been in shambles as her parents were going through a divorce. The defendant knew about the victim's home life and played upon it to woo her into the relationship. He talked with her and offered her advice and she came to trust him. He hired her to clean his house on the weekends for extra money. He acquired her cell phone number because of the cleaning job and began telephoning her on a nightly basis. He eventually professed intimate feelings for the 16-year-old victim and invited her to his house. She described the defendant as a "predator." He made her feel safe and secure then took advantage of her.

¶ 12 When the affair became public, the victim felt that her life had hit "rock bottom." The defendant had been popular with students, and the victim was tormented daily by students with offensive comments and notes. The victim was so distraught that she changed high schools in the middle of her junior year. As a result, she was unable to be involved with any sports or clubs and she was unable to take the advanced placement classes she had been taking at her old school. She eventually switched back to her old school so she could continue to take more advanced classes. The victim felt that switching schools affected her grades and ACT scores in a negative way.

¶ 13 The victim felt that there were many scholarship and award opportunities that she was

eligible for but believed she was not even considered. She was the only one of the top 10 students in her class who did not receive the Outstanding Senior Award. She had worked very hard to be at the top of her class and felt the defendant had taken it away from her.

¶ 14 She decided she needed a fresh start, and when she turned 18 she moved to Florida and started college. She spent time and money in counseling. She expressed her wish that the defendant be penalized for his conduct and that he be stopped before "he is able to target and destroy more young peoples' lives."

¶ 15 The victim also identified a group exhibit consisting of numerous emails that were exchanged between her and the defendant. She explained that there were many more emails and that this was just a sample. The emails began when the victim was just 15 years old. The victim had been in some of the defendant's classes. He got her address from her aunt, with whom he was acquainted. The defendant later married this aunt, and she was his wife at the time of the offense and at the time of the sentencing hearing. He first began telephoning the victim when she was 16 years old, and at first the calls had to do with her cleaning his house. The defendant knew that the victim was having some family problems.

¶ 16 When the victim was 16 years old she did not have any classes with the defendant, but she would go to his classroom on her lunch hours. She would grade papers for him and talk, and sometimes he would write her a pass out of study hall and Spanish class so she could be in his classroom. At least three times he kissed her intimately on school grounds, usually during the lunch hour in his classroom.

¶ 17 The defendant hosted a "Brazil night" at his house for the victim and some of her friends. They all stayed the night at his house. The victim believed that by this time the sexual relationship had begun.

¶ 18 The first time the two had sex the victim had just turned 16 years old. The defendant provided her with Smirnoff Ice and she became drunk and vomited. She does not remember

the sexual encounter clearly but is certain that it happened. The victim believed this was only the first or second time she had consumed alcohol. The victim believed she had spent the night at the defendant's house about four or five times and had sex with him. On one occasion, the defendant sent her home by taxi at 5 a.m. because he did not want anyone to see his vehicle dropping her off. The victim also spent a night in a hotel room with the defendant. Their relationship lasted from October to the beginning of January. During this time, the defendant was also having sex with the victim's aunt who later became his wife. There was also a third woman with whom he was having sex during the same time period.

¶ 19 The defendant asked the victim to delete her emails from and to him and set up a separate email account so no one would be able to find them. The defendant used to joke with the victim about how his conduct with her was illegal and he might go to prison.

¶ 20 The victim eventually ended the relationship before it became public. The affair became public because the defendant told another teacher.

¶ 21 The defendant presented the following evidence in mitigation. Dana Anderson testified that he had known the defendant for 23 years although they often lived far apart and did not see each other often. Anderson was very surprised to learn of the charges against the defendant. Anderson testified that the defendant had suffered a great deal as a result of his misconduct, losing his job and his home. But the defendant had persevered and was trying to build a good life, getting a job and trying to provide for his daughter. Anderson believed that the defendant would be able to follow rules and be a productive member of society.

¶ 22 Anderson also testified about an "intervention" he and some other friends had done on the defendant because of his excessive abuse of alcohol. Anderson did not believe the defendant sought any treatment or counseling as a result of the intervention.

¶ 23 The defendant's father, Steve Willis, testified that the defendant had a supportive extended family. Willis believed that the defendant was a different man than he had been

when he committed the offense. The defendant wants to work and provide for his daughter. He began working in the coal mine and is a hard worker and is liked and respected by his coworkers. Willis is the manager of health and safety at the mine where the defendant works. The defendant provides financial support to his daughter. Although the defendant had not seen his daughter in several months, he was a good father. The child's mother would not let the defendant visit. Willis admitted that the defendant has a substance abuse problem which he is working hard to control. Willis believed that if the defendant were ordered to stop drinking entirely he would do so, although he had not chosen to give up alcohol voluntarily. Willis acknowledged that the defendant had received counseling for substance abuse on a number of occasions. Willis believed the defendant understood what he had done. Three character letters from friends of the defendant were admitted into evidence.

¶ 24 The defendant made a statement in allocution. He apologized to the victim and her family. He stated, "It has been a long grueling process, and you know if I could go back, you know, it's like I've said before, I felt like I was doing a bad impersonation of myself." He stated that his life now has a purpose because he has a daughter who he wants to raise. He wants to remain employed so he can support her financially. He stated that he wanted to move forward and be productive. He acknowledged that he had made a mistake but wanted an opportunity to go on living a better life.

¶ 25 The State argued in aggravation that the defendant had held a position of trust or supervision, school teacher, at the time of the offense. The State pointed out that the defendant had never *completed* substance abuse treatment. The State asked for a sentence of imprisonment for five years and a $5,000 fine.

¶ 26 The defense argued in mitigation that the man who committed this offense in 2005 was not the same man in court for sentencing in 2010. The defense argued that there was a presumption in favor of probation and that the defendant deserved probation. The defendant

had agreed to make restitution to the victim's family for any expenses they had incurred, such as counseling fees, as a result of his conduct. The defense further argued that the defendant had no criminal history prior or subsequent to his involvement with the victim. The defense argued that the conduct is unlikely to recur because the defendant will never again be a teacher. The defendant was likely to comply with the terms of probation. Finally, the defense argued that imprisonment would result in hardship to the defendant's daughter because he would not be able to support her financially. The defendant claimed to be his daughter's sole source of financial support because the child's mother was unemployed.

¶ 27 After a brief recess, the court pronounced sentence. The court recognized in mitigation that the defendant had no criminal history and had led a law-abiding life up to this offense. The court also recognized that the defendant was on probation in another county for misdemeanor battery based on his sexual relationship with the victim, so to that extent he had a criminal record. The court acknowledged that the defendant would never be a teacher again but pointed out that that did not mean he would never again be in a position of trust or authority over, or exposed to, teen-age girls. Therefore, it was not necessarily unlikely that this type of conduct would not recur. With regard to the hardship on the defendant's daughter as a result of his imprisonment, the court did not find that any such hardship would be "excessive." The defendant did not have custody of the child and had not had contact with the child for some time. The court did not deem the loss of the defendant's financial support to be "excessive." The court did not find that the defendant's character and attitude indicated that he was unlikely to commit another crime in the future, and the court could not find that the defendant was likely to comply with probation.

¶ 28 In aggravation the court found that a prison sentence was necessary to deter other teachers from committing similar crimes. The court found this to be a very powerful factor and gave it great weight. The fact that the defendant held a position of trust over his victim,

and abused that position in order to take advantage of her, was also a factor in aggravation. The victim was affected "physically, sexually, emotionally, leaving her devastated, no question about it."

¶ 29 The court stated that the defendant appeared to have issues in his life which had not been resolved involving substance abuse. Even after the defendant was arrested and charged with the instant crime, his substance abuse problems continued. These issues remain unresolved.

¶ 30 The court noted that the victim appeared to "be just basically destroyed emotionally by this." Finally, the court stated:

> "So when I compare her attitude and her affect with yours, maybe it's your demeanor, but I don't know, but listening to you when you gave me your statement in allocution, watching you in court, you just don't–you seem to have, in my opinion, little or no remorse for the situation here. You just don't seem to have any remorse. It doesn't seem to affect you. Maybe that's because of your personality, but in my judgment, you're not taking this as seriously as you should."

¶ 31 The court found that a sentence of probation would deprecate the seriousness of this offense and would not serve the ends of justice. The defendant was sentenced to five years' imprisonment.

¶ 32 On October 25, 2010, the defendant filed a motion to reduce his sentence arguing that the circuit court had failed to give appropriate consideration to mitigating factors and that the sentence was excessive. At the hearing on the motion the defendant made an additional statement in allocution. He stated that his attitude toward the case had never been flippant and he knew he had caused the victim and her family much grief and much suffering. He also acknowledged collateral damage to his friends and family. He continues to attend AA meetings and felt that he had completed the goals laid out for him in counseling. He had also

filed for a separation and divorce from his wife because she is a substance abuser. He is highly motivated and determined to be employed and support his child. Counsel pointed out that according to the sex offender evaluation the defendant's risk of reoffending was low.

¶ 33 After taking the matter under advisement, the court denied the defendant's motion to reduce his sentence. The defendant brings this appeal, asking us to reduce his sentence.

¶ 34 The defendant argues that the circuit court abused its discretion in sentencing him to prison rather than probation because several of the statutory mitigating factors set forth in section 5-5-3.1 of the Unified Code of Corrections (730 ILCS 5/5-5-3.1 (West 2010)) weigh in favor of a sentence of probation and the excessive hardship resulting to the defendant's four year-old daughter dictates a sentence of probation. The statutory factors pointed to by the defendant as weighing in favor of probation are: the defendant has no history of prior delinquency or criminal activity prior to his involvement with this victim; the defendant's criminal conduct was the result of circumstances unlikely to recur; the character and attitude of the defendant indicate that he is unlikely to commit another crime; the defendant is particularly likely to comply with the terms of a period of probation; and the imprisonment of the defendant would entail excessive hardship to his dependent.

¶ 35 As our preceding statement of the facts demonstrates, the circuit court explicitly considered each of these mitigating factors and concluded that, when weighed against the aggravating factors, they did not weigh in favor of a sentence of probation. The circuit court rejected the defendant's argument that his criminal conduct was the result of circumstances unlikely to recur. The court acknowledged that although the defendant would never again be employed as a teacher, that did not mean he would never again be in a position of trust or supervision over, or be exposed to, teen-age girls. The circuit court also explicitly rejected the defendant's claim that his character and attitude indicate that he is unlikely to commit another crime. The circuit court found quite the opposite: that the defendant seemed to have

little remorse for what he had done and little understanding of the effect of his conduct on the victim. Finally, the circuit court explicitly found that the defendant's daughter would not be subjected to "excessive" hardship as a result of the defendant's imprisonment. The defendant provided only financial support to the child, and there was no evidence in the record that the child would suffer financially without the defendant's support. The defendant had not had contact with the child for some time prior to his sentencing, and the court expressed doubt about the existence of a bond between the defendant and his daughter.

¶ 36 On the other hand, the circuit court gave great weight to the aggravating factor that a prison sentence was necessary to deter other teachers from committing similar crimes, the harm caused to the victim and her family, and the fact that the defendant held and used his position of trust to take advantage of the victim. The court found that a sentence of probation would deprecate the seriousness of the offense and would not serve the ends of justice.

¶ 37 A reviewing court may reduce a sentence only when the circuit court has abused its discretion in sentencing. *People v. Smith*, 214 Ill. App. 3d 327, 338 (1991). Before this court will interfere with the sentence imposed, it must be manifest from the record that the sentence is excessive and not justified by any reasonable view which might be taken of the record. *Smith*, 214 Ill. App. 3d at 338. A sentence within the statutory limits will not be deemed to be excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Romero*, 387 Ill. App. 3d 954, 978 (2008) (quoting *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 38 The circuit judge is in the best position to fashion a sentence which balances both the need to protect society and to rehabilitate the offender inasmuch as he has had the opportunity to observe the defendant in person and can better assess his credibility, demeanor, general moral character, mentality, environment, habits, and age, along with a consideration of such other factors as his prior criminal history, rehabilitative potential, the

seriousness of the offense, and the need to protect society and to deter others. *Smith*, 214 Ill. App. 3d at 338-39.

¶ 39 We find no abuse of discretion in the circuit court's imposition of a sentence of imprisonment rather than probation in this case. The record demonstrates that the circuit court carefully considered all of the factors in mitigation and aggravation as well as the character and attitude of the defendant, the nature and circumstances of the offense, and the impact on society. A court abuses its discretion only where no reasonable person would take the view adopted by it. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). Such is not the case here.

¶ 40 For the foregoing reasons, the judgment of the circuit court of Williamson County is hereby affirmed.

¶ 41 Affirmed.